

907 KAR 20:001. Definitions for 907 KAR Chapter 20.

RELATES TO: KRS 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 20.

Section 1. Definitions. (1) "1915(c) home and community based service" means a service available or provided via a 1915(c) home and community based services waiver program.

(2) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to, and in accordance with, 42 U.S.C. 1396n(c).

(3) "ABD" means a person who is aged, blind, or disabled.

(4) "Adult scale" means the scale located in 907 KAR 20:020, Section 1(1), establishing Medicaid income limits by family size.

(5) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(6) "Adverse action" means:

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner; or

(e) The failure of a managed care organization to act within the timeframes provided in 42 C.F.R. 438.408(b).

(7) "After the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of a Medicaid eligible family.

(8) "Aid to Families with Dependent Children" or "AFDC" means an assistance program:

(a) In effect from 1935 to 1996;

(b) For children whose families had low or no income; and

(c) Administered by the United States Department of Health and Human Services.

(9) "Ambulatory prenatal care" means health-related care furnished to a presumed eligible pregnant woman provided in an outpatient setting.

(10) "Appeal" means a request for review of an adverse action or a decision by an MCO related to a covered service.

(11) "Applicant" means an individual applying for Medicaid.

(12) "Authorized representative" means:

(a) For a recipient or applicant who is authorized by Kentucky law to provide written consent, an individual or entity acting on behalf of, and with written consent from, the applicant or recipient; or

(b) A legal guardian.

(13) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.

(14) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.

(15) "Blind work expense" or "BWE" means an SSI program option in which expenses a

blind individual incurs in order to earn income are deducted for an SSI eligibility purpose.

(16) "Cabinet" is defined by KRS 194A.005(1).

(17) "Caretaker relative" means:

(a) An individual:

1. Who is the caregiver of a child; or
2. On whose tax return the child is listed as a dependent; and

(b) Who has one (1) of the following relationships to the child:

1. A grandfather;
2. A grandmother;
3. A brother;
4. A sister;
5. An uncle;
6. An aunt;
7. A nephew;
8. A niece;
9. A first cousin;
10. A relative of the half-blood;
11. A preceding generation denoted by a prefix of:
 - a. Grand;
 - b. Great; or
 - c. Great-great; or
12. A stepfather, stepmother, stepbrother, or stepsister.

(18) "Categorically needy" means an individual with income below 300 percent of the supplemental security income (SSI) standard who has been receiving hospice or 1915(c) home and community based services for at least thirty (30) consecutive days.

(19) "Child" means a person who:

(a) 1. Is under the age of nineteen (19) years;

2.a. Is a full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Is expected to complete the program before the age of nineteen (19) years;

3. Is not self supporting;

4. Is not a participant in any of the United States Armed Forces; and

5. If previously emancipated by marriage, has returned to the home of his or her parents or to the home of another relative;

(b) Has not attained the age of nineteen (19) years in accordance with 42 U.S.C. 1396a(l)(1)(D); or

(c) Is under the age of nineteen (19) years if the person is a KCHIP recipient.

(20) "Community spouse" means the individual who is married to an institutionalized spouse who:

(a) Remains at home in the community; and

(b) Is not:

1. Living in a medical institution;
2. Living in a nursing facility; or
3. Participating in a 1915(c) home and community based services waiver program.

(21) "Community spouse maintenance standard" means the income standard to which a community spouse's otherwise available income is compared for purposes of determining the amount of the allowance used in the post-eligibility calculation.

(22) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home or both and may include thirty (30)

consecutive days of receipt of a 1915(c) home and community based service or a combination of both.

(23) "Countable resources" means resources not subject to exclusion in the Medicaid Program.

(24) "DCBS" means the Department for Community Based Services.

(25) "Deemed eligible newborn" means an infant born to a mother who, at the time of the infant's birth, was a Medicaid recipient.

(26) "Department" means the Department for Medicaid Services or its designee.

(27) "Dependent child" means a biological child, a step child, or a child gained through adoption, who:

(a) Lives with a parent in the community; and

(b) Is claimed as a dependent by either parent under the Internal Revenue Service Code.

(28) "Dependent parent" means a parent:

(a) Of either member of a couple;

(b) Who lives with the community spouse; and

(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(29) "Dependent sibling" means a brother or sister of either member of a couple, including a half-brother, half-sister, or sibling gained through adoption, who:

(a) Resides with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(30) "Enrollee" means a recipient who is enrolled with a managed care organization for the purpose of receiving Medicaid or KCHIP covered services.

(31) "Excess shelter allowance" means an amount equal to the difference between the community spouse's verified shelter expenses and the minimum shelter allowance.

(32) "Fair market value" means an estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred based on:

(a) The gross tax assessed value of the property as stated by the local property valuation administrator; or

(b) An independent, licensed appraiser.

(33) "Family alternatives diversion payment" means a lump sum payment made to a Kentucky Transitional Assistance Program applicant:

(a) To meet short-term emergency needs; and

(b) Pursuant to 921 KAR 2:500.

(34) "First month of SSI payment" means the first month for which an SSI-related Medicaid recipient is determined to be eligible for SSI payments.

(35) "Foster care" is defined by KRS 620.020(5).

(36) "Gross income" means non-excluded income which would be used to determine eligibility prior to income disregards.

(37) "Homestead" means property:

(a) In which an individual has an ownership interest; and

(b) Which an individual uses as the individual's principal place of residence.

(38) "ICF IID" means intermediate care facility for individuals with an intellectual disability.

(39) "Impairment related work expense" or "IRWE" means an SSI program option in which the United States Social Security Administration deducts the cost of items or services an individual needs, due to an impairment, in order to work.

(40) "Incapacity" means a condition of mind or body making a parent physically or mentally unable to provide the necessities of life for a child.

(41) "Income" means money received from:

(a) Statutory benefits (for example, Social Security, Veterans Administration pension, black

lung benefits, or railroad retirement benefits);

- (b) A pension plan;
- (c) Rental property;
- (d) An investment; or
- (e) Wages for labor or services.

(42) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016.

(43) "Institutionalized" means:

- (a) Residing in:
 - 1. A nursing facility;
 - 2. An intermediate care facility for an individual with an intellectual disability; or
 - 3. A medical institution;
- (b) Receiving hospice services; or
- (c) Receiving 1915(c) home and community based services.

(44) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:

- (a) An inpatient in:
 - 1. A nursing facility;
 - 2. An intermediate care facility for individuals with an intellectual disability; or
 - 3. A medical institution;
- (b) Receiving 1915(c) home and community based services; or
- (c) Receiving hospice services.

(45) "Institutionalized spouse" means an institutionalized individual who:

- (a)1. Is in a medical institution, intermediate care facility for an individual with an intellectual disability, or nursing facility;
- 2. Participates in a 1915(c) home and community based services waiver program; or
- 3. Is receiving hospice services;
- (b) Has a spouse who is not an institutionalized individual; and
- (c) Is likely to remain institutionalized for at least thirty (30) consecutive days while the community spouse:
 - 1. Is not receiving hospice services; and
 - 2. Remains out of a medical institution, nursing facility, intermediate care facility for an individual with an intellectual disability, or 1915(c) home and community based services waiver program.

(46) "KCHIP" means the Kentucky Children's Health Insurance Program administered in accordance with 42 U.S.C. 1397aa to jj.

(47) "Kentucky Transitional Assistance Program" or "K-TAP" means:

- (a) Kentucky's version of TANF; and
- (b) A money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.

(48) "Keogh plan" means a full-fledged pension plan for self-employed individuals in the United States of America.

(49) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).

(50) "Long-term care partnership insurance policy" means a policy meeting the requirements established in KRS 304.14-642(2).

(51) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42

C.F.R. 438.2.

(52) "Mandatory state supplement" is defined by 42 C.F.R. 435.4.

(53) "Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(54) "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for individuals with an intellectual disability.

(55) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(56) "Medically needy" is defined by 42 C.F.R. 435.4.

(57) "Medically-needy income level" or "MNIL" means the basic maintenance standard used in the determination of Medicaid eligibility for the medically needy.

(58) "Medicare Part A" means federal health insurance that covers:

(a) Inpatient hospital or skilled nursing facility services, including blood transfusions;

(b) Hospice services; and

(c) Home health services.

(59) "Medicare qualified individual group 1 (QI-1)" means an eligibility category in which an individual would be a qualified Medicaid beneficiary but for the individual's income disqualifying the individual from being a qualified Medicare beneficiary due to the circumstances described in 42 U.S.C. 1396a(a)(10)(E)(iv).

(60) "Minimum shelter allowance" means an amount that is thirty (30) percent of the standard maintenance amount.

(61) "Minor" means the couple's minor child or the couple's minor individual older than a child who:

(a) Is under the age of twenty-one (21) years;

(b) Lives with a community spouse; and

(c) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(62) "Modified adjusted gross income" or "MAGI" is defined by 42 U.S.C. 1396a(e)(14)(G).

(63) "Month of separation" means the month in which an individual ceases living in the same household of a Medicaid eligible family.

(64) "Monthly income allowance" means an amount:

(a) Deducted in the posteligibility calculation for maintenance needs of a community spouse or other family member; and

(b) Equal to the difference between a spouse's and other family member's income and the appropriate maintenance needs standards.

(65) "NF" means nursing facility.

(66) "Nonqualified alien" means a resident of the United States of America who does not meet the qualified alien requirements established in 907 KAR 20:005, Section 2.

(67) "Non-recurring lump sum income" means money received at one (1) time which is normally considered as income, including:

(a) Accumulated back payments from Social Security, unemployment insurance, or workers'

compensation;

(b) Back pay from employment;

(c) Money received from an insurance settlement, gift, inheritance, or lottery winning;

(d) Proceeds from a bankruptcy proceeding; or

(e) Money withdrawn from an IRA by an individual prior to the individual reaching the age where no penalty is imposed for withdrawing the IRA, KEOGH plan, deferred compensation, tax deferred retirement plan, or other tax deferred asset.

(68) "Nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted a nursing facility license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), and (d) and 42 C.F.R. 447.280 and 482.66.

(69) "Old Age, Survivors, and Disability Insurance" or "OASDI" means the social insurance program:

(a) More commonly known as "Social Security"; and

(b) Into which participants make payroll contributions based on earnings.

(70) "Optional state supplement" is defined by 42 C.F.R. 435.4.

(71) "Other family member" means a relative of either member of a couple who is a:

(a) Minor or dependent child;

(b) Dependent parent; or

(c) Dependent sibling.

(72) "Other family member's maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of the other family member and the standard maintenance amount.

(73) "Otherwise available income" means income to which the community spouse has access and control, including gross income that would be used to determine eligibility under Medicaid without benefit of disregards for federal, state, and local taxes; child support payments; or other court ordered obligation.

(74) "Patient status criteria" means the patient status criteria established in 907 KAR 1:022.

(75) "Physician" is defined by KRS 311.550(12).

(76) "Plan to Achieve Self Support" or "PASS" means an SSI program option which enables a disabled individual receiving SSI benefits to:

(a) Identify a work goal;

(b) Identify training, items, or services needed to reach the work goal; and

(c) Set aside money for installment payments or a down payment for items needed to reach the work goal.

(77) "Presumptive eligibility" means Medicaid eligibility determined:

(a) By a provider authorized by 907 KAR 20:050 to make a presumptive eligibility determination; and

(b) In accordance with 907 KAR 20:050.

(78) "Primary care center" means an entity that meets the primary care center requirements established in 902 KAR 20:058.

(79) "Provider" is defined by KRS 205.8451(7).

(80) "Qualified alien" means an alien who, at the time the alien applies for or receives Medi-

caid, meets the requirements established in 907 KAR 20:005, Section 2(2)(a)2. or 3.

(81) "Qualified disabled and working individual" is defined by 42 U.S.C. 1396d(s).

(82) "Qualified Medicare beneficiary" or "QMB" is defined by 42 U.S.C. 1396d(p)(1).

(83) "Qualified non-citizen" is defined in 8 U.S.C. 1641(b) and (c).

(84) "Qualified provider" means a provider who:

(a) Is currently enrolled with the department;

(b) Has been trained and certified by the department to grant presumptive eligibility to pregnant women; and

(c) Provides services of the type described in 42 U.S.C. 1396d(a)(2)(A) or (B) or 42 U.S.C. 1396d(a)(9).

(85) "Qualifying income trust" or "QIT" means an irrevocable trust established for the benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).

(86) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(87) "Recipient" is defined in KRS 205.8451(9).

(88) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization of the institutionalized spouse upon request by either spouse, of the joint resources of a couple if a member of the couple enters a medical institution or nursing facility, receives hospice services, or becomes a participant in a 1915(c) home and community based services waiver program.

(89) "Resources" mean cash money and other personal property or real property that:

(a) An individual:

1. Owns; and

2. Has the right, authority, or power to convert to cash; and

(b) Is not legally restricted for support and maintenance.

(90) "Retirement, Survivors, and Disability Insurance" or "RSDI" means an insurance benefit program:

(a) Managed by the United States Social Security Administration;

(b) Also known as Social Security Disability or Social Security Disability Insurance; and

(c) Which aims to provide monthly financial support to individuals who have lost income due to retirement, disability, or death of a family provider.

(91) "Rural health clinic" is defined by 42 C.F.R. 405.2401(b).

(92) "Satisfactory documentary evidence of citizenship or nationality" is defined by 42 U.S.C. 1396b(x)(3)(A).

(93) "Significant financial duress" means a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.

(94) "Social Security" means a social insurance program administered by the United States Social Security Administration.

(95) "Social Security number" means a number issued by the United States Social Security Administration to United States citizens, permanent residents, or temporary working residents pursuant to 42 U.S.C. 405(c)(2).

(96) "Special income level" means the amount which is 300 percent of the SSI standard.

(97) "Specified low-income Medicare beneficiary" means an individual who meets the requirements established in 42 U.S.C. 1396a(a)(10)(E)(iii).

(98) "Spend-down liability" means the amount of money in excess of the Medicaid income

eligibility threshold to which incurred medical expenses are applied to result in an individual's income being below the income eligibility threshold.

(99) "Spousal protected resource amount" means resources deducted from a couple's combined resources for the community spouse in an eligibility determination for the institutionalized spouse.

(100) "Spousal share" means one-half (1/2) of the amount of a couple's combined countable resources, up to a maximum of \$60,000 to be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

(101) "Spouse" means a person legally married to another under state law.

(102) "SSI benefit" is defined by 20 C.F.R. 416.2101.

(103) "SSI essential person, spouse, or nonspouse" means an individual necessary to an SSI recipient to enable the SSI recipient to be self-supporting.

(104) "SSI general exclusion" means the twenty (20) dollars disregard from income allowed by the Social Security Administration in an SSI determination.

(105) "SSI program" means the United States supplemental security income program.

(106) "SSI standard" means the amount designated by the Social Security Administration as the federal benefit rate.

(107) "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guideline for a family unit of two (2) members, with revisions of the official income poverty guidelines applied for Medicaid provided during and after the second calendar quarter that begins after the date of publication of the revisions, multiplied by 150 percent.

(108) "State plan" is defined by 42 C.F.R. 400.203.

(109) "State spousal resource standard" means the amount of a couple's combined countable resources determined necessary by the department for a community spouse to maintain himself or herself in the community.

(110) "Support right" means the right of an institutionalized spouse to receive support from a community spouse under state law.

(111) "Targeted low-income child" is defined by 42 C.F.R. 457.310(a).

(112) "Temporary Assistance for Needy Families" or "TANF" means a block grant program which:

(a) Succeeded AFDC; and

(b) Is designed to:

1. Assist needy families so that children can be cared for in their own homes;

2. Reduce the dependency of needy parents by promoting job preparation, work, and marriage;

3. Prevent out-of-wedlock pregnancies; and

4. Encourage the formation and maintenance of two-parent families.

(113) "Title IV-E benefits" means benefits received via Social Security Act Title IV, Part 3, which is codified as 42 U.S.C. 670 to 679c.

(114) "Tobacco Master Settlement Agreement" means an agreement entered into in November 1998 between certain tobacco companies and states' attorneys general of forty-six (46) states:

(a) Which settled states' lawsuits against the tobacco industry for recovery of tobacco-related health care costs;

(b) Which exempted the tobacco companies from private tort liability regarding harm caused by tobacco; and

(c) In which the tobacco companies agreed to make various annual payments to the states to compensate for some of the medical costs incurred in caring for individuals with smoking-related illnesses.

(115) "Transferred resource factor" means an amount that is:

(a) Equal to the average:

1. Monthly cost of nursing facility services in the state at the time of application; and
2. Of private pay rates for semi private rooms of all Medicaid participating facilities; and

(b) Adjusted annually.

(116) "Trust" means a legal instrument or agreement valid under Kentucky state law in which:

(a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and

(b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

(117) "Trusted source" means a source recognized by the federal government or department as a reliable source for verifying an individual's information.

(118) "Uncompensated value" means the difference between the:

(a) Fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset; and

(b) Amount received for the asset.

(119) "Undue hardship" means that:

(a) Medicaid eligibility of an institutionalized spouse cannot be established on the basis of assigned support rights; and

(b) The spouse is subject to discharge from the medical institution, nursing facility, or 1915(c) home and community based services waiver program due to inability to pay.

(120) "Valid immigrant status" is defined in:

(a) 8 U.S.C. 1101(a)(15); or

(b) 8 U.S.C. 1101(a)(17).

(121) "Veteran" is defined in 38 U.S.C. 101(2). (40 Ky.R. 1203; 1746; 2141; eff. 4-4-2014; Crt eff. 12-6-2019.)